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FISCAL IMPACT STATEMENT

LS 7072

BILL NUMBER: SB 324

NOTE PREPARED: Jan 7, 2003

BILL AMENDED:

SUBJECT: Bail Law.

FIRST AUTHOR: Sen. Clark

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: **GENERAL**
 X DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

(A) It provides that an undertaking expires 36 months after it is posted for the release of a defendant unless, within the 36-month period: (1) the bond is declared to be forfeited; and (2) the court notifies the surety and the bail agent of the forfeiture.

(B) It prohibits a court from assessing a late surrender fee or entering judgment on a forfeiture if the surety or bail agent provides evidence satisfactory to the court that: (1) the defendant fled to a jurisdiction that does not allow extradition or refuses to extradite the defendant; or (2) the prosecuting attorney failed or refuses to extradite the defendant.

Effective Date: July 1, 2003.

Explanation of State Expenditures:

Explanation of State Revenues: If *Provisions A and B* cause fewer bail bonds to be forfeited, then the revenue that the Common School Fund receives from bail bond forfeitures would be reduced. Forfeited bail bonds are deposited in the Common School Fund.

Explanation of Local Expenditures: *Provision A* would require the sentencing court to send a certified letter with a return receipt to both the surety agent and the bail agent notifying them of the forfeiture. A certified letter with a return receipt requested that weighs one ounce costs \$4.42 for the clerk of the court to send. The added costs to the county government will depend on the number of new mailings that the clerk would have to send out.

Background: Under current law, when a defendant does not appear in court, the clerk of the court sends a notice to the bail agent and the surety about the defendant's absence. If the bail agent fails to produce the defendant for a court appearance after 365 days, the court immediately enters judgment on the forfeiture and assesses all actual costs resulting from the defendant's failure to appear. If the court does not receive all unpaid fees, the clerk of the court mails notice to the commissioner of the Department of Insurance. The Department of Insurance notifies the bail agent of any unpaid fees due to the forfeiture.

Explanation of Local Revenues: *Provision A:* An undertaking is the bond that a bail agent posts with the court to guarantee that a criminal defendant will appear in court at a scheduled court appearance.

Under current law, an undertaking expires 36 months after it was posted for release of a defendant. There are two exceptions under current law:

- when a bond has already been forfeited or
- when a defendant is a fugitive from the court after 36 months.

Under this bill, an undertaking would expire 36 months after posting unless the bond has been declared to be forfeited prior to the 36-month deadline.

This provision would eliminate a bail agent's liability to pay a late surrender fee for not producing the defendant for a court appearance if a defendant is still at large after 36 months and the court has not forfeited the bond and any additional fees that the local agent is ordered by the court to pay.

Provision B: Under current law, if a bail agent does not produce a defendant for a court appearance or give proper justification within 365 days for the defendant's failure to appear, the bail agent is liable for a late surrender fee. This provision would exempt bail agents when a defendant flees to a jurisdiction that either does not allow extradition or refuses to extradite the defendant or when the prosecuting attorney fails or refuses to extradite the defendant.

This provision would also result in a revenue loss if the bail agent is no longer liable for the late surrender fee.

Background Information: If a criminal defendant executes bail with a bail bondsman and fails to appear in court, a Late Surrender Fee (based on a percentage of the value of the bond) is assessed against the bail agent. The Late Surrender Fee is based on a percentage of the value of the bond according to the following table.

Number of Days Late after Appearance Date:	Late Surrender Fee Is Assessed at the Value of the Bond At:
120 to 180 days	20%
180 to 210 days	30%
210 to 240 days	50%
240 days to 365 days	80%

If the bail bond is forfeited, the bail agent is responsible for the following:

- 20% of the face value of the bond is deposited in the Common School Fund

- jury fees
- witness fees and
- any other documented costs incurred by the court.

Half of the revenue from the Late Surrender Fee is deposited in the Police Pension Trust Fund, and the other half is deposited in a County Extradition Fund.

Local governments reported receiving the following amounts from the Late Surrender Fee between CY 1997 and CY 2001.

<u>CY</u>	<u>Trial Courts</u>	<u>City and Town Courts</u>	<u>Total Revenue Collected</u>
1997	\$804,525	\$2,640	\$807,165
1998	\$739,321	\$10,528	\$749,849
1999	\$820,023	\$11,665	\$831,688
2000	\$1,041,349	\$16,568	\$1,057,917
2001	\$588,100	\$128,923	\$717,023

State Agencies Affected:

Local Agencies Affected: Trial courts, prosecuting attorneys office.

Information Sources: *Indiana Judicial Reports*, 1997 to 2001.

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